

Department of Workforce Development  
Employment and Training Division  
Bureau of Workforce Training  
P.O. Box 7972  
Madison, WI 53707-7972  
Telephone: (608) 266-5370  
Fax: (608) 267-0330  
Email: DWDDDET@dwd.wisconsin.gov



State of Wisconsin  
Department of Workforce Development  
Jim Doyle, Governor  
Roberta Gassman, Secretary  
Ron Danowski, Division Administrator

Date: October 14, 2009  
To: Workforce Development Board Directors  
From: Gary Denis, Director  
Bureau of Workforce Training *Gary Denis*  
Subject: WIA Policy Update 09-05: Pre-Award Criteria - Business  
Relocation/Expansion (120 Rule)

### Purpose

To transmit a WIA Policy Update regarding the provision of Workforce Investment Act (WIA) services to relocating/expanding businesses. This policy update also provides pre-award review criteria which must be completed and documented jointly by local Workforce Development Boards (WDBs) and relocating/expanding businesses as a prerequisite to receiving WIA assistance.

### Legislative/Regulatory References

WIA Section 181(d) of the WIA of 1998 and 20 CFR Part 667.268, WIA, Final Rules

### Background

Section 667.268 of the WIA Final Rules states that WIA funds may not be used to encourage or induce a business or part of a business to relocate from any location in the United States if the relocation results in any employee losing their job at the original location. When a relocation results in employee job loss at the original location, WIA funds may not be used for customized training, skill training, on-the-job training, or company-specific assessments of job applicants or employees until the company has operated at the new location for a minimum of 120 days. Local areas may have already incorporated these restrictions into their practices; this policy formalizes those practices.

For the purpose of this policy, the following definitions are provided:

- A relocating business is a company that moves operations from a facility in one labor market area within the United States and its territories to a new or expanding facility in another labor market area.
- A labor market area is a geographic area within which workers can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

- Loss of employment occurs when a person no longer has a job at the original location because of the relocation. This does not include those who would have retired or quit regardless of the relocation, or those who were fired for cause.
- The term "commercial operations" is intended to distinguish between the planning/construction and operational phases of business. For example, the 120-day count would start on the day that the company begins manufacture of a product, not on the day construction begins.

## **Policy**

In order to verify that an establishment, which is new or expanding, is not relocating employment from another area, the WDB, or its designee, and the new or expanding business must jointly complete and document a pre-award review. This pre-award review is a prerequisite to the business' receipt of any WIA-funded services. As a result of the review, if it is determined that relocation from one labor market area within the United States and its territories to another labor market area has occurred, the following criteria must be met:

1. The relocation did not result in any employee losing his or her job at the original location; or
2. If the relocation did result in any employee losing his or her job at the original location, the company has been in operation (e.g., in production or providing services) in the new location for a minimum of 120 days.

The attached standardized pre-award review form must be used for documenting reviews. Comparable locally developed procedures and forms may be used providing they address, at a minimum, the criteria specified in the regulations, and the issues and information covered in this policy and on the attached form.

According to the WIA regulations, a pre-award review must document the following:

1. Name(s) under which the establishment does business (including predecessors and successors in interest).
2. The name, title, and address of the company official certifying the information.
3. A certification that the new or expanding business is not relocating the business or part of the business and displacing workers.

If the business or part of the business is relocating, the business must provide the following:

1. A statement from the employer about job losses at the former location and information relative to whether a bargaining agreement was in place which covered affected employees.
2. A certification by the employer regarding whether any WARN notices have been filed.

The review may also include consultations with labor organizations and others in the affected local area.

If the State determines that a violation of this provision has occurred, the Governor shall require repayment to the State in an amount equal to the amount expended in violation of Section 667.268.

**Action Required**

This information and the related requirements must be communicated to staff responsible for reviewing and negotiating WIA-funded on-the-job, customized, skill, or incumbent worker training agreements with new or expanding businesses. Staff conducting company-specific assessments of business positions, job applicants or employees for new or expanding businesses must also be informed of this requirement.

**Questions and/or Technical Assistance**

If you need additional information regarding this policy, please contact the Local Program Liaison assigned to your area.

## ATTACHMENT A

### Pre-Award Review

*No funds provided under the Workforce Investment Act (WIA) shall be used, or proposed to be used, for the encouragement or inducement of a business, or a part of business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location (20 CFR 667.268).*

The purpose of this review is to determine whether a business establishment is new or expanding and if there is any relation to a loss of employment in another geographic area. The pre-award review is to be completed and documented jointly by the local Workforce Development Board and the business establishment as a prerequisite to receiving WIA Title I assistance.

1. Name(s) under which the establishment does business (including predecessors and successors in interest).
2. Date the company or establishment will expand or commence operations.
3. Name, title, and address of the company official that is certifying the information.

Name:

Title:

Address:

4. Name and address of any facility in another geographic location that is being closed or from which business is being transferred. Provide location(s):
5. Determine if WIA assistance is sought in connection with past or impending job losses at other facilities and identify the type of assistance requested by the establishment under consideration in this pre-award review.
6. Provide statement from employer about job losses at the former location(s).

Was a collective bargaining agreement in place that covered the affected employees?

If so, provide the name of union representation.

7. Consult with the labor representative to confirm whether any dislocations from the relocation occurred and provide summary of discussion.
8. Review WARN notices relating to the employer and list dates of submission.

As the authorized official of \_\_\_\_\_, I certify that the WIA Pre-Award Review information set forth above is true and accurate. \_\_\_\_\_ agrees to defend, indemnify, and save the State of Wisconsin, the Workforce Development Board, and \_\_\_\_\_ as the reviewing entity harmless from and against any and all liability, loss, damage, cost, and expense, including court costs and attorney fees (whether or not litigation be commenced), of whatever nature or type, including WIA disallowed costs, that the State or WDB may suffer, incur or be required to pay, which result from \_\_\_\_\_'s failure to provide accurate information in response to the WIA Pre-Award Review.

Authorized Representative's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

The WIA pre-award review was conducted by \_\_\_\_\_, an Authorized representative of \_\_\_\_\_, in accordance with WIA State Policy on Business Relocation: Pre-Award Review. Neither the State of Wisconsin, any local Workforce Development Board, nor \_\_\_\_\_, as the Entity conducting the review, shall be legally liable regarding the responses provided by \_\_\_\_\_ during the conduct of this review.

Based upon this review, WIA Title I assistance to this establishment is:

- ☐ Appropriate
- ☐ Not Appropriate

Reviewer's Name: \_\_\_\_\_

Reviewer's Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_